

Message Text

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PAGE 01 STATE 153145

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JUSTICE - MR. MCWHORTER (SUBS)

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FM SECSTATE WASHDC

TO USMISSION USUN NEW YORK

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TAGS: ASEC, CPRS

SUBJECT: SECURITY AND PROTECTION OF MISSIONS AND THEIR
PERSONNEL

REF: USUN 2434

FOLLOWING ANSWERS TO QUESTIONS CONTAINED PARA 3 OF REFTTEL
KEYED TO THAT PARA. IT IS DIFFICULT TO GIVE SPECIFIC ANSWERS
TO MANY OF THESE GENERAL QUESTIONS AS MANY ANSWERS
DEPEND ON FACTS AND CIRCUMSTANCES OF PARTICULAR CASE. IT
WOULD PROBABLY BE MOST USEFUL FOR USUN TO CONTACT U.S.
ATTORNEY'S OFFICE TO ASCERTAIN PECULIARITIES OF LOCAL
PRACTICE.

1(A)(I) FEDERAL OFFICERS CAN ARREST ONLY UNDER FEDERAL
LAW, AND PROCEDURAL ASPECTS OF LOCAL LAW NEED NOT BE
FOLLOWED.

1(A)(II) LOCAL POLICE GENERALLY ARREST UNDER STATE AND
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PAGE 02 STATE 153145

LOCAL LAWS; HOWEVER, DEPENDING UPON STATE LAW IT IS SOME-

TIMES POSSIBLE FOR THEM TO ARREST WHEN BREACH OF FEDERAL LAW OCCURS. WE BELIEVE THAT NEW YORK LAW SO ALLOWS; HOWEVER, ACTUAL PROCEDURE SHOULD BE CHECKED WITH NYPD. NEVERTHELESS, JUSTICE FEELS IT NOT ADVISABLE THAT NYPD MAKE ARRESTS UNDER FEDERAL LAW AS A GENERAL PRACTICE.

1(B) FBI HAS RESPONSIBILITY FOR INVESTIGATING CRIMES UNDER FEDERAL ACT. IF CRIMES ACTUALLY IN PROGRESS, MIS-SIONS SHOULD BE ADVISED TO NOTIFY DIRECTLY LOCAL FBI OFFICE.

2(A)(I) THERE IS NO NEED FOR VICTIM TO SUBMIT WRITTEN COMPLAINT UNDER FEDERAL JUDICIAL PROCEDURES. COMPLAINTS ARE ISSUED BY FEDERAL LAW ENFORCEMENT OFFICIALS AFTER INVESTIGATION OF AN INCIDENT WHEN THERE APPEARS TO BE PROBABLE CAUSE FOR ARREST OF A SUSPECT.

2(A)(II) IF ALLEGED ACT IS MISDEMEANOR, THERE IS NO NEED FOR GRAND JURY INVESTIGATION. GRAND JURY INDICTMENTS ARE NECESSARY FOR FELONIES, BUT PROCEDURES DIFFER AMONG VARIOUS FEDERAL CIRCUITS. GENERALLY, IT IS NOT NECESSARY TO HAVE COMPLAINING WITNESS APPEAR; HOWEVER, IT IS ADVISABLE TO CHECK PROCEDURE IN 2D CIRCUIT (N.Y.) WITH LOCAL U.S. ATTORNEY.

2(A)(III) AND (B) THIS DEPENDS ON FACTS OF EACH CASE. IF POLICE EYE-WITNESS OR OTHER EYE-WITNESSES TO ASSAULT ON PROTECTED PERSON ARE AVAILABLE, THEN POSSIBLY IT WOULD NOT BE NECESSARY FOR THE VICTIM TO TESTIFY. IF HARM HAS BEEN DONE TO PROPERTY OWNED BY FOREIGN GOVERNMENT, THEN PROBABLY EMPLOYEE OF MISSION (INCLUDING POSSIBLE AMERICAN EMPLOYEES) WOULD HAVE TO TESTIFY TO IDENTIFY PROPERTY. IT IS POSSIBLE ALSO THAT DEFENSE COULD REQUEST TESTIMONY FROM VICTIM AS A WITNESS AND IF VICTIM REFUSED TO TESTIFY, THEN IT WOULD BE UP TO COURT TO DECIDE WHETHER TO STOP PROSECUTION OR ALLOW IT WITH AVAILABLE WITNESSES. COURT'S DECISION WOULD DEPEND IN LARGE MEASURE ON ITS VIEW AS TO WHETHER EVIDENCE WHICH COULD BE PROVIDED ONLY BY WITNESS

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PAGE 03 STATE 153145

MIGHT BE IMPORTANT ELEMENT OF DEFENDANT'S CASE.

3(A) TESTIMONY OF VICTIM WOULD PROBABLY MAKE FOR A STRONGER CASE. TRIER OF FACT (JURY, OR JUDGE IF NON-JURY TRIAL) MUST WEIGH ALL EVIDENCE PRESENTED TO DETERMINE OUTCOME OF CASE. TESTIMONY OF VICTIM POSSIBLY WOULD BE GIVEN MORE WEIGHT BY JURY OR COURT AND WOULD TEND TO STRENGTHEN PROSECUTOR'S CASE. HOWEVER, DEPENDING ON FACTS OF PARTI-

CULAR CASE, NON-APPEARANCE OF VICTIM WOULD NOT NECESSARILY MEAN ACQUITTAL.

3(B) POLICE AND OTHER WITNESSES CAN FOR THE MOST PART TESTIFY ONLY AS TO WHAT THEY ACTUALLY SAW. IF SUCH WITNESSES COULD PRESENT A SUFFICIENTLY STRONG CASE AGAINST THE ACCUSED, THEN TESTIMONY BY VICTIM WOULD NOT BE TECHNICALLY NECESSARY AS A MATTER OF LAW (I.E., CASE COULD BE

SUFFICIENT TO GO TO JURY IN JURY TRIAL). AGAIN, THOUGH, TRIER OF FACT WILL WEIGH ALL EVIDENCE PRESENTED AND IN CERTAIN SITUATIONS TESTIMONY OF VICTIM MAY BE NEEDED TO SUPPLEMENT OTHER TESTIMONY. IT MUST BE REMEMBERED THAT THE PROSECUTOR IN A CRIMINAL CASE MUST PROVE DEFENDANT GUILTY BEYOND WHAT THE TRIER OF FACT CONSIDERS A REASONABLE DOUBT AND THEREFORE SHOULD PRESENT HIS STRONGEST CASE INCLUDING TESTIMONY FROM VICTIM IF IT IS A CLOSE CASE. ABILITY OF WITNESSES OTHER THAN VICTIM TO SATISFY TESTIMONIAL REQUIREMENTS UNDER 3(A) WILL BE DETERMINED BY PROSECUTING ATTORNEY BEFORE EACH INDIVIDUAL CASE.

4(A) FEDERAL COURT REQUIRES WRITTEN WAIVER OF IMMUNITY FROM MISSION PRIOR TO ALLOWING TESTIMONY BY PERSON HAVING IMMUNITY. EXTENT AND SCOPE OF WAIVER DEPENDS ON PRECISE LANGUAGE USED IN WRITTEN RELEASE. NORMALLY WAIVER WILL COVER ONLY DIPLOMAT'S IMMUNITY FROM BEING REQUIRED TO TESTIFY (E.G. SUBPOENAED) ON A PARTICULAR CASE. EVEN IF DIPLOMAT REFUSED TO ANSWER QUESTIONS AFTER HAVING WAIVED IMMUNITY, HE WOULD LIKELY BE IMMUNE REPEAT IMMUNE FROM CONTEMPT PROCEEDINGS. IF HE DECLINES TO ANSWER RELEVANT QUESTIONS FROM DEFENSE ON CROSS-EXAMINATION, THEN IT IS QUITE POSSIBLE THAT HIS WHOLE TESTIMONY COULD

UNCLASSIFIED

PAGE 04 STATE 153145

BE STRICKEN, WHICH MIGHT RENDER PROSECUTION'S CASE INSUFFICIENT AS A MATTER OF LAW. OF COURSE REFUSAL TO ANSWER A NUMBER OF QUESTIONS WOULD IN ANY EVENT PROBABLY LESSEN WEIGHT ACCORDED TO WITNESS'S TESTIMONY BY TRIER OF FACT.

4(B) THERE IS LACK OF FEDERAL CASE LAW ON THIS SUBJECT AND PRACTICE VARIES AMONG FEDERAL COURT CIRCUITS. MATTER SHOULD BE DISCUSSED WITH U.S. ATTORNEY IN 2D CIRCUIT. ROGERS

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